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November 6, 1992

VIA FEDERAL EXPRESS

Ms. Donna M. Searcy, Secretary  
Federal Communications Commission  
1919 M Street, N.W., Room 222  
Mail Stop 1170  
Washington, D.C. 20554

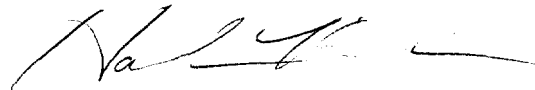
Re: GEN Docket No. 90-314 & ET Docket 92-100:  
Personal Communications Services

Dear Ms. Searcy:

Transmitted herewith, on behalf of Teleport Denver Ltd. ("TDL"), are an original and eleven (11) copies of its Comments in the above-referenced proceeding. TDL desires that each Commissioner receive a personal copy of TDL's comments.

Questions and copies of all correspondence should be directed to undersigned counsel.

Very truly yours,



Harsha Krishnan

KHK/tmf

Enclosures

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NOV - 9 1992

*Before the*  
**Federal Communications Commission**  
*Washington, D.C. 20554*

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Amendment of the Commission's  
Rules to Establish New Personal  
Communications Services

GEN Docket No. 90-314  
ET Docket No. 92-100

RM-7140, RM-7175, RM-7617  
RM-7618, RM-7760, RM-7782  
RM-7860, RM-7977, RM-7978  
RM-7979, RM-7980

PP-35 through PP-40, PP-79  
through PP-85

To: The Commission

**COMMENTS OF TELEPORT DENVER LTD.**

**TELEPORT DENVER LTD.**

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November 5, 1992

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*Before the*  
**Federal Communications Commission**  
*Washington, D.C. 20554*

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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through PP-85

To: The Commission

COMMENTS OF TELEPORT DENVER LTD.

Teleport Denver Ltd. ("TDL"), by its attorneys, hereby submits its Comments in response to the Commission's Notice of Proposed Rulemaking and Tentative Decision ("NPRM") adopted on July 16, 1992 and released on August 14, 1992. In support of its comments, TDL respectfully states:

I. Introduction

TDL is competitive access provider ("CAP") which provides both intrastate and interstate telecommunications services. TDL provides intrastate services in Colorado: private line telecommunications service pursuant to a certificate of public convenience and necessity ("CPCN") issued by the Colorado Public Utilities Commission, and deregulated intrastate special access services. TDL also offers, on a private carrier basis, interstate telecommunications services which either originate or terminate in Colorado. These services include: video

entertainment, video conferencing systems, private business transmission services, international business services, VSAT services, and interstate digital access services.

Through its wide array of services, TDL seeks to enhance the quality and flexibility of its customers' communications needs by providing a single, integrated, cost-effective solution to their transmission requirements. To this end, TDL employs a "consultative" selling approach, in which TDL analyzes its customers' telecommunications requirements and develops an optimal solution, integrating appropriate communications technologies, tailored to that customers' unique needs.

Personal Communications Services ("PCS") will augment TDL's sophisticated telecommunications services. TDL supports the Commission's goals of universality, speedy deployment, diverse services and competitive delivery of PCS. TDL further observes that competitive delivery of PCS will be essential to attaining and maintaining the Commission's other objectives. Therefore, the Commission's regulatory policy regarding PCS must attempt to foster and sustain effective competition between PCS providers and between PCS and other telecommunications services.

## II. Comments on Specific Proposals

A. Eligibility Requirements. The nature of the services provided by local exchange carriers ("LECs"), cellular carriers, and PCS providers, as well as the competitive interrelations between those services dictate that neither local exchange

carriers nor cellular carriers should receive PCS licenses within their current service area.

Even with the advent of cellular service and PCS, the traditional local exchange service provided by LECs still faces no effective competitive alternative, particularly in the residential and small business markets. Telecommunications services customers rely primarily on LECs for access to residential or business premises and customers are unlikely to have either cellular or PCS but not have local access at their homes or offices. Cellular and PCS are used only when the customer is away from her premises and local access service is, therefore, unavailable. Thus, cellular and PCS complement, not replace, local access service.

Cellular and PCS, however, are substitutes for each other. While the services offered by cellular and PCS providers may differ in detail and utilize different technologies, from a functional or policy perspective, the services are similar. It appears unlikely that a customer would subscribe to both cellular and PCS; instead, a customer would select only one of those services as a complement to basic local exchange service. As complementary services to local access and functionally similar, cellular and PCS are clearly competitive substitutes.

The substitutability of the services raises concerns because of the limited availability of the radio frequency spectrum. Since the spectrum limits market entry and exit, the public interest demands that spectrum be allocated to create

maximum competition. TDL agrees with the General Accounting Office ("GAO") analysis that allocating spectrum to new firms, rather than existing cellular carriers will further the public interest by maximizing competition. Granting PCS licenses to cellular carriers in their current service areas reduces the number of service providers as well as the availability and variety of services.

For example, if the PCS license area is identical to the cellular service area and the Commission decides to award three PCS licenses per market, there is a maximum of five potential providers of competing services. By allowing cellular carriers to obtain PCS licenses, there could be only three providers within the market, with a single new PCS provider competing against two established cellular carriers. This situation would greatly limit the consumers' alternatives, whether the cellular carriers chose to actually offer PCS, or simply delay implementation by tying up the frequency spectrum allocated to them. Moreover, the single new PCS provider must labor under a significant competitive disadvantage, which may further delay implementation of innovative services.

By the same analysis, LECs also should not be allowed to obtain PCS licenses in their existing service areas. Through their wireline cellular subsidiaries, LECs already offer a complementary service to their own local access service. Granting a PCS license to a LEC, even if through another separate subsidiary, would produce the same anticompetitive

effects described above. Moreover, allowing LECs to obtain PCS licenses would discriminate against non-wireline cellular carriers.

This prohibition against obtaining PCS licenses in the cellular service area should extend to any firm with an exclusive affiliation, through joint marketing or other arrangements, with either LECs or cellular carriers. As a practical matter, such affiliations result in a single interest, despite the nominal difference in ownership. Regardless of whether the PCS license is granted directly or to an affiliate, the cellular carrier or LEC still has the motivation and opportunity for anti-competitive behavior.

B. Limits on Holding Multiple Licenses. Other than prohibiting an entity and its affiliates from holding more than one license in a given market, there is no reason to limit the total number of licenses held by any entity. TDL suggests that the Commission adopt its practice in the cellular context, where, instead of setting a specific standard, the Commission evaluates license merger and transfers on a case-by-case basis.

C. Licensing Mechanism. If the Commission decides to adopt a lottery, TDL proposes that the Commission require complete financial and technical showings on applications. First, this would limit filings to serious applicants possessing the requisite resources to implement PCS. Second, the Commission could immediately begin examining the applicant's qualification upon selection of the lottery winner. Furthermore, should the

lottery winner prove unqualified, the Commission could promptly process the alternate licensee. Third, the preparation of the complete application will require potential licensees to ensure the technical and financial feasibility of their proposals, and thereby prepare them to compete against the established cellular carriers.

D. Number of Providers. TDL suggests that the Commission first consider whether it should issue the same number of PCS licenses in each market. A large metropolitan area might support four or five PCS providers, while less densely populated areas might not support even three. The Commission should examine data on competition, such as the GAO report on cellular competition, and then determine the number of license appropriate for each market.

Alternatively, the Commission could set a maximum number of licenses in each market, and then let the market determine the optimal number. Under this proposal, the Commission would allow greater flexibility in mergers or transfers of licenses in those markets that cannot support the maximum number of providers.

E. PCS Service Areas. TDL believes that PCS service areas based on the existing Local Access and Transport Area ("LATA") structure would be the most efficient, thereby encouraging competition and enabling rapid implementation of service. The industry is already familiar with the LATA system, and many regional facilities, serving arrangements, and internal systems already in place use the LATA service area concept. With the



existing Regional Bell Operating Company ("RBOC") intraLATA transmission networks, PCS providers could more quickly develop regional systems based on incorporating and reselling LEC services and facilities for interstate service. New transmission facilities would not have to be constructed to immediately bring the benefits of PCS to rural or sparsely populated areas, minimizing basic startup costs and keeping costs low to end users. Consequently, the LATA approach would accelerate the availability of new PCS technology, thereby advancing the public interest in a most expedient manner.

Although a nationwide service area might maximize economies of scope and scale, TDL believes that such a service area would bar market entry to all but a few very large firms. The enormous financial and technical resources required for nationwide service will necessitate implementation of service in stages. Thus, even with a nationwide service area, implementation would proceed on a market by market basis. Moreover, such delayed implementation would probably produce extensive delays before PCS service became available in less densely populated areas. Furthermore, with only three PCS service providers, it is unlikely that a thriving market fostering innovation and service variety would develop.

Although service areas corresponding to the 47 Major Trading Areas would be preferable to a single, nation-wide service area, this approach still excludes a significant number of firms which have the expertise but not the resources to

provide PCS service to such an extensive region. The 487 Basic Trading Areas, however, goes to the other extreme. The number of services areas is not significantly smaller than the number of cellular service areas. Just as in the cellular context, many service areas would be too small or sparsely populated to attract significant competition. That proposal has the same drawbacks inherent in the cellular service area structure.

Accordingly, the LATA structure offers the optimal configuration for PCS service areas in the public interest. The LATA proposal also recognizes the complementary relationship between local access and PCS. Regional licenses also will allow simultaneous implementation in numerous markets. Moreover, regional licenses would enable regional firms to serve the areas where they have expertise, experience and interest.

F. Regulatory Status. If the Commission prohibits LECs and cellular carriers from receiving PCS licenses in their existing service areas, then PCS providers should be classified as non-dominant carriers, and not subject to tariff regulation at the federal level. Since PCS complements local exchange service, PCS providers will require the flexibility to resell service interconnected with the public switched network. Consequently, regulation of PCS as private land mobile radio service would thwart the effectiveness and potential of PCS. Non-dominant carrier status would also be appropriate in light of the competition between PCS and cellular services. The number of PCS providers and cellular carriers in any market area will

prevent a PCS provider from developing market power or to act in an anticompetitive manner.

However, if the Commission allows LECs and cellular carriers to obtain PCS licenses in their service areas, then TDL asserts that these PCS providers should be regulated as dominant common carriers. In this situation, PCS licenses granted to cellular carriers or LECs reduce the number of competing service providers. This circumstance offers a greater opportunity for anticompetitive conduct, particularly since the new PCS providers must compete against established carriers. Furthermore, the reduced number of providers drastically reduces consumer alternatives. The potential for such abuse would warrant dominant carrier regulation.

G. Interconnection. TDL acknowledges the difficulty in predicting the various types of interconnection that PCS providers may request or require. At a minimum, though, the Commission must firmly establish the principle of non-discrimination in interconnection. Furthermore, if the Commission allows LECs or cellular carriers to obtain PCS licenses in their existing service areas, the Commission should impose an even stricter standard.

LECs must be bound to the spirit as well as the letter of the Commission's interconnection policy. For example, a particular type of interconnection used by a LEC subsidiary, while available to competing PCS providers, might be of little or no use to such competitors. The LEC must offer not only non-

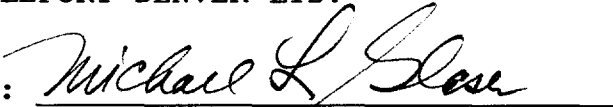
discriminatory facilities, but also interconnection that is functionally and economically non-discriminatory interconnection. Every PCS provider must be able to obtain the same functionality at the same rates (allowing for provider-imposed avoidable costs) as any other PCS provider.

### III. Conclusion

PCS offers exciting new possibilities for communications technology. The fulfillment of that potential requires the innovation produced by a thriving, diverse, and competitive market. In particular, the Commission rules should recognize the competition between PCS providers and existing cellular carriers, as well as the potential for anticompetitive conduct by existing cellular carriers and LECs. Accordingly, the Commission's PCS regulations should adopt TDL's recommendations.

Respectfully submitted,

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